# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 136

FRANTZESKOS PAVGOUZAS, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The per curiam opinion of the Court of Appeals (Pet. App. A) is reported at 341 F. 2d 920.

### JURISDICTION

The judgment of the court of appeals was entered on March 2, 1965. The petition for a writ of certiorari was filed May 13, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether the 1962 amendment to Section 244 of the Immigration and Nationality Act, barring suspension of deportation to "an alien who entered the

United States as a crewman," applies to a crewman who entered before the effective date of the Act but applied for suspension in 1964.

STATUTES INVOLVED

Section 244 of the Immigration Act of 1952 (66 Stat. 214) as amended by the Act of October 24, 1962 (76 Stat. 1247, 8 U.S.C. 1254), provides in pertinent part:

> (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and—
>
> (1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence * * *
>
> * * * * * *
>
> (f) No provision of this section shall be applicable to an alien who (1) entered the United States as a crewman; or (2) was admitted to

the United States pursuant to section 101(a)(15)(J) or has acquired such status after admission to the United States; or (3) is a native of any country contiguous to the United States or of any adjacent island * * *.

Section 405(a) of the 1952 Act, 8 U.S.C. 1101 note, provides in pertinent part:

> Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed * * * to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time of this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * * An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended * * * shall be regarded as a proceeding within the meaning of this subsection.

## STATEMENT

Petitioner, a native of Greece, entered the United States as a seaman in 1954. After an order of deportation was entered against him, petitioner was married to an American citizen in January, 1957. A petition by his wife for issuance of a nonquota visa was approved and the immigration proceedings were

reopened. Petitioner was granted pre-examination and the privilege of voluntary departure in November, 1957.[1] The time for voluntary departure was thereafter continuously extended until April, 1964, but in that period petitioner failed to take advantage of the pre-examination privilege and failed to depart. Instead, in April, 1964, when a deportation order was about to be entered, he moved to reopen the proceedings to afford him an opportunity to apply for suspension of deportation. This was denied by the Board of Immigration Appeals on the ground that, under Section 244(f) of the Immigration and Nationality Act, as amended in October, 1962 (*supra* p. 2), petitioner was ineligible for suspension of deportation since he had entered the United States as a crewman (Pet. App. B). An order of deportation was then entered. On petition to the Court of Appeals for the Third Circuit to review the deportation order, petitioner challenged the ruling that he was ineligible for suspension of deportation. The court of appeals affirmed the order *per curiam* (Pet. App. A).

## ARGUMENT

Petitioner is apparently arguing that the 1962 amendment to Section 244 of the Immigration and

[1] The privileges of pre-examination and voluntary departure, which have now been superseded by other provisions, allowed an illegal entrant certain procedural advantages in obtaining readmission to the United States in a legal status. The illegal entrant was permitted to establish his eligibility for entry while still in the United States, rather than in a foreign country, and then to make a *pro forma* voluntary departure to, and re-entry from, a foreign country.

Nationality Act, which provides that suspension shall not be available to an alien who "entered the United States as a crewman" does not apply to any crewman who entered the United States before the effective date of the Act. There is no warrant for this interpretation. That Congress intended the 1962 amendment to apply to persons already in the United States at the time of the enactment is shown, not only by its use of the word "entered" with respect to crewmen, but also by its use of the words "was admitted" in the second subdivision (which deals with persons admitted to teach or study). It has been held that the 1962 amendment applies to bar suspension even to seamen who had applications for suspension administratively pending or under judicial review at the time the amendment became effective. *Foti* v. *Immigration and Naturalization Service*, 332 F. 2d 424 (C.A. 2); see also *Patsis* v. *Immigration and Naturalization Service*, 337 F. 2d 733 (C.A. 8). This is in accord with the general rule that where there is a change of law during the pendency of an administrative hearing, the new law governs. *Ziffrin, Inc.* v. *United States*, 318 U.S. 73, 78. *A fortiori*, the new law governs in petitioner's case, where his application for suspension was not filed until long after the 1962 amendment had been passed.

Even if the savings clause of the 1952 Act applied to the 1962 amendment, as it clearly does not (see discussion in the *Patsis* decision, *supra*), this would not avail petitioner, for he had no proceeding for suspension pending when the 1962 amendment took effect.

The savings clause of the 1952 Act saved only applications for suspension under the 1917 Act which were then pending since it provided only that such an application should be deemed a "proceeding" within the meaning of the section (see *supra* p. 3).[2]

## CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
*Solicitor General.*

FRED M. VINSON, JR.,
*Acting Assistant Attorney General.*

BEATRICE ROSENBERG,
*Attorney.*

JUNE 1965.

---

[2] Petitioner attempts to create the impression that there was a deportation proceeding pending before the Board because in 1957 he had been granted the privilege of pre-examination and voluntary departure. There is no merit to this argument. In view of the grant of pre-examination, petitioner had the right to establish his eligibility for admission while in the United States, and then depart to another country, such as Canada, and return as a nonquota immigrant, the spouse of an American citizen. See Gordon and Rosenfield, *Immigration Law and Procedure*, Sec. 7.3, p. 711. Had petitioner taken advantage of this privilege, while it was available, in the extended period that was given him to do so, there would have been no deportation and no reason to request suspension of deportation. Thus the 1957 grant of the privilege of voluntary departure and pre-examination cannot be deemed part of the 1964 application for suspension of deportation.

U.S. GOVERNMENT PRINTING OFFICE: 1965